IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No. 1415 of 2001

K.Chinnasamy ... Petitioner
Appellant/Accused

-vs-

C.Duraisamy ... Respondent
Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C, against the judgment, dated 06.08.2001, made in C.A.No.86 of 2001 on the file of the II Additional Sessions Judge, Erode, confirming the conviction made in the judgment, dated 24.04.2001 in C.C.No.254 of 1998 on the file of the Judicial Magistrate No.III, Erode.

For petitioner : Mr.V.Krishnamoorthy

For respondent : Mr.N.Manokaran

O R D E R

This Criminal Revision Petition is directed against the judgment, rendered in C.A.No.86 of 2001 on the file of the II Additional Sessions Judge, Erode, confirming the conviction and sentence, imposed in C.C.No.254 of 1998 on the file of the Judicial Magistrate No.III, Erode.

2. The brief facts of the case are as follows :

The case in C.C.No.254 of 1998 on the file of the learned Judicial Magistrate No.III, Erode was taken on file on the complaint given by the respondent / complainant, under Section 138 r/w 142 of Negotiable Instruments Act. As per the complaint, the revision petitioner / accused, had received a sum of Rs.1,00,000/- from the respondent / complainant on 02.01.1998 and issued a post dated cheque, dated 02.04.1998 of Karur Vysya Bank, Erode Branch, the same was sent by the respondent / complainant, for collection through Indian Overseas Bank, Erode Branch, but was dishonoured and returned with the note "insufficient funds". In support of his contention, the respondent / complainant examined himself as P.W.1, apart

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from examining the officer of the Karur Vysya Bank, Erode Branch as P.W.2 and marking documents Ex.P.1 to P.8. No witness was examined and no documents were marked on the side of the revision petitioner / accused. The dishonoured cheque issued by the respondent / complainant was marked as Ex.P.1, along with the written memo sent by the Karur Vysya Bank, whereby it was intimated that no sufficient funds available in the account. Subsequent to the dishonour, the respondent / complainant issued legal notice, Ex.P.4 and the postal receipt has been marked as Ex.P.5. Then, the respondent / complainant filed the complaint under Section 138 r/w 142 of Negotiable Instruments Act.

3. Considering the oral and documentary evidence, the trial court has held that the charges levelled against the revision petitioner / accused has been proved beyond reasonable doubt and accordingly, convicted him under Section 138 of Negotiable Instruments Act and imposed six months simple imprisonment and a fine of Rs.1,000/- with default sentence. Against which appeal was preferred in C.A.No.86 of 2001 on the file of the II Additional Sessions Judge, Erode, The appellate court, considering the evidence available on records and the arguments advanced by both sides, has confirmed the conviction and sentence and dismissed the appeal. Aggrieved by which, this Criminal Revision has been preferred by the revision petitioner / accused.

4. According to the learned counsel for the revision petitioner / accused, notice was not served on him, as contemplated under Section 138 of Negotiable Instruments Act and further contended that the petitioner herein had filed Insolvency Petition in I.D.No.14/98, that was not considered by the court below.

5. Learned counsel appearing for the revision petitioner / accused would contend that there was no proper service of legal notice, as contemplated under Section 138 of Negotiable Instruments Act. Before the trial court, it is seen that no such defence was raised by the revision petitioner / accused, even by way of suggestion to the prosecution witnesses. It is seen from the findings of the courts below that the respondent / complainant has established that the cheque was issued by the revision petitioner herein, which was dishonoured due to insufficient funds in the account.

6. According to P.W.2, the dishonoured cheque, Ex.P.1 was drawn on Karur Vysya Bank, Erode Branch. He has clearly stated that the signature in the cheque is signature of the account holder, who is none other than the revision petitioner herein and due to insufficient funds, it was returned by the memo, Ex.P.2. The courts below have also held as per Section 72 of Indian Evidence Act, that the cheque has been issued only by the revision petitioner / accused. Further, the revision petitioner has not disputed genuineness of the cheque by adducing any oral evidence. The respondent / complainant had sent the cheque for collection through Indian Overseas Bank, Erode branch, and due to the dishonour of the cheque, the

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said bank has sent Ex.P.3, debit advice to the respondent / complainant. Subsequently, the respondent / complainant issued legal notice, Ex.P.4. The postal receipt and the returned unserved registered letter sent to the petitioner were also marked as Ex.P.5 and Ex.P.6 respectively. As per the endorsement available in the postal cover, it is seen that the same was sent to the correct address of the revision petitioner / accused and the same is not in dispute. As per the findings of the court below, the revision petitioner has evaded the service, hence, it was returned.

7. In the decision, D.Vinod Shivappa, vs. Nanda Belliappa, reported in 2006 (3) CTC 591, the Hon'ble Supreme Court has held that Section 138 of Negotiable Instruments Act was enacted to punish unscrupulous persons, who issued cheque in purported discharge of liability without really intending to do so. The said section has certain inbuilt safeguards to protect the honest drawer, who fails to honour the cheque issued by him, by providing opportunity to make payment within the time prescribed from the receipt of statutory notice. Such safeguard is made available under Proviso to Section 138, but the proviso is meant only for honest drawer and not to protect the unscrupulous drawers.

8. In the instant case, it has been established that the cheque was issued by the revision petitioner / accused, which was dishonoured by the bank, due to insufficient funds. Subsequently, the respondent / complainant issued legal notice, but as found by the courts below, the revision petitioner has evaded service of notice, and without raising any defence with regard to service of notice before the trial court, he has raised the defence in the revision that notice was not served, as contemplated under the proviso of Section 138 of Negotiable Instruments Act. As held by the Hon'ble Supreme Court, the said proviso is meant for honest drawer and not to protect the unscrupulous drawers.

9. In the instant case, I could see that there is no manifest error of law or perverse finding, leading to injustice or miscarriage of justice, so as to warrant the interference of this Court. I could find no error or infirmity in the conviction and sentence imposed by the courts below and hence, this Criminal Revision Petition fails and the same is liable to be dismissed.

10. In the result, this Criminal Revision Petition is dismissed.

tsvn

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1. The II Additional Sessions Judge, Erode.
2. The Judicial Magistrate No.III, Erode.
3. -do- thro the Chief Judicial Magistrate, Erode.
+ One cc to Mr. N. Manokaran, Advocate SR 29105
BV (co)
sg 7/6/07 Crl.R.C.No.1415 of 2001

HIGH COURT OF JUDICATURE MADRAS
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